

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

## SAN JOSE DIVISION

11 3M Company,  
12 Plaintiff,  
13 v.  
14 Rollit, LLC, et al.,  
15 Defendants.

No. C06-01225 JW

**FINAL PRETRIAL  
CONFERENCE ORDER - BENCH TRIAL**

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17 On May 19, 2008, the Court conducted a Final Pretrial Conference. Counsel for the  
18 respective parties were present. In light of the discussion at the conference, the Court orders as  
19 follows:

**TRIAL SCHEDULE**

<b>Hearing re: Motions in Limine and Evidentiary Objections</b>	<b>June 13, 2008 9 a.m.</b>		
<b>Sessions</b>	<b>Sessions 1 &amp; 2</b>	<b>June 17, 2008 9 a.m.-12 p.m., 1-4 p.m.</b>	
	<b>Sessions 3 &amp; 4</b>	<b>June 18, 2008 9 a.m.-12 p.m., 1-4 p.m.</b>	
	<b>Sessions 5 &amp; 6</b>	<b>June 19, 2008 9 a.m.-12 p.m., 1-4 p.m.</b>	
	<b>Sessions 7 &amp; 8</b>	<b>June 24, 2008 9 a.m.-12 p.m., 1-4 p.m.</b>	
	<b>Sessions 9 &amp; 10</b>	<b>June 25, 2008 9 a.m.-12 p.m., 1-4 p.m.</b>	
	<b>Sessions 11 &amp; 11</b>	<b>June 26, 2008 9 a.m.-12 p.m., 1-4 p.m.</b>	
	<b>Sessions 13 &amp; 14</b>	<b>July 1, 2008 9 a.m.-12 p.m., 1-4 p.m.</b>	
<b>Argue &amp; Submit</b>	<b>July 2, 2008 9 a.m.-12 p.m.</b>		

## Motions in Limine and Evidentiary Objections

The Court sets the briefing schedule for the motions in limine and evidentiary objections as follows:

- (1) Opening briefs for all objections and in limine shall be filed on or before **May 23, 2008**.
- (2) Oppositions, if any, shall be filed on or before **May 28, 2008**.
- (3) Replies, if any, shall be filed on or before **May 30, 2008**.

On or before **June 10, 2008 at 3 p.m.**, the parties shall organize their evidentiary objections and in limine motions as follows:

- (1) Each side shall be responsible for producing a combined folder with all of *their* in limine motions, oppositions to their motions (if any), and replies (if any), respectively. The motion papers shall be clearly marked and separated in one single binder. The binder shall contain a table of contents, listing each motion with a short sentence regarding the grounds for in limine and a short sentence regarding the opposition; all statements must be supported by proper citations to the motions. The table of contents shall also be saved on a 3½ floppy disk in MS Word or WordPerfect format to be attached inside the binder.
- (2) Two copies of the binder shall be delivered to the Court (by way of the Clerk's Office) no later than **June 10, 2008 at 3 p.m.** The parties must also bring the binder to the hearing for their own references.
- (3) Please note that this binder is not a substitute for filing the motions and related papers via ECF; it is designed for the Court to evaluate the motions.

## Exhibits

23           1. On the day before the first day of trial, each party shall lodge with Chambers an exhibit  
24 binder for each witness, which shall contain all exhibits which the party contemplates offering into  
25 evidence through the witness. Any party objecting to an exhibit shall insert a page in front of the  
26 exhibit which identifies the party making the objection and the legal ground for the objection.

1 Although an exhibit to which an objection has been made may be shown to the witness, it shall not  
2 be displayed unless the objection is overruled and the exhibit is received into evidence.

3        2. If the case involves only a few exhibits, instead of witness exhibit binders, the parties may  
4 include all exhibits in a single notebook.

5           3. Unless otherwise ordered, all exhibits shall be in a format compatible with either the  
6 video or digital evidence presentation system utilized by the Court for display after it is received into  
7 evidence.

8       4. The parties are encouraged to stipulate to the admission into evidence of all exhibits. If  
9 the parties stipulate to admissibility, the parties shall indicate, "I am going to show you Exhibit \_\_,  
10 which is in evidence by stipulation." The exhibit may be shown to the witness without being  
11 formally offered into evidence.

12        5. The proffering party shall retain custody of all exhibits, schedules, summaries, diagrams  
13 or charts to be used at the trial.

## **Trial Procedure**

15       6. Counsel must question witnesses from the podium, using the microphone. Without  
16 requesting permission, counsel may approach witnesses for any proper purposes.

17 7. Address all remarks to the Court, not to opposing counsel.

18        8. Refer to all persons, including witnesses, other counsel and the parties by their surnames  
19 and not by their first or given names.

20        9. No demonstrative exhibits, charts, diagrams or enlargements shall be placed within sight  
21 unless previously disclosed to opposing counsel.

22 10. In examining a witness, counsel shall not repeat or echo the answer given by the witness.

23        11. Counsel must stand when making an objection. When objections or responses to  
24 objections are made, only the legal basis of the objections and responses may be stated.

25        12. Conferences at the bench or sidebar are not favored by the Court. Any sidebar  
26 conferences which are allowed will be off the record. If any counsel wishes to place matters on the  
27 record, he or she may so request, and the Court will make a responsive order.

1       13. Counsel have full responsibility to arrange for the appearance of witnesses during the  
2 presentation of their case so as to eliminate delay caused by waiting for witnesses who have been  
3 placed on call by counsel.

4       14. Unless an agreement to the contrary is entered into by opposing counsel, all nonparty or  
5 nonexpert witnesses will be excluded from the courtroom when not testifying. When a witness has  
6 completed his or her testimony, the witness is excused unless counsel indicates that he or she wishes  
7 the witness to remain subject to being recalled. Any witness who has been excused from further  
8 testimony may remain as a spectator. It will be the responsibility of counsel to make an  
9 announcement at the time the witness steps down that he or she should remain in the environs of the  
10 Court for a reasonable time to permit such counsel an opportunity to secure and serve a subpoena  
11 upon the witness and assume responsibility for his or her per diem and other expenses as provided  
12 by governing rule or statute.

13       15. Counsel shall admonish all persons at counsel table that gestures, facial expressions,  
14 audible comments, or the like, as manifestations of approval or disapproval during the testimony of  
15 witnesses, or at any other time, are prohibited.

16       16. Counsel should never ask the Court reporter to mark or flag a witness's answer to a  
17 particular question. Instead, make a note of the time and subject matter of the testimony you want  
18 marked, and inform the reporter unobtrusively at the next recess.

19       17. Witness examination shall consist of direct examination, cross-examination and re-direct  
20 examination. No recross-examination will be allowed without prior approval of the Court  
21 specifically indicating the area for recross-examination. When there are multiple defense counsel,  
22 they are directed to confer and designate to the Court the sequence in which they wish to be  
23 recognized during trial for purposes of presenting opening statements and conducting cross-  
24 examination of witnesses. If one counsel conducts the direct examination of a witness, that same  
25 counsel must make objections when the witness is cross-examined. Counsel who will conduct the  
26 cross-examination should object while the witness is on direct.

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1       18. From and after the moment the case is called for trial, any objection, motion or other  
2 application for relief made by any defense counsel, orally or in writing, shall be deemed to be  
3 adopted and joined in by every other defendant, without announcement by counsel to that effect, and  
4 the rulings of the Court shall be deemed applicable to each defendant unless otherwise stated at the  
5 time the ruling is made. Accordingly, it shall be regarded as unnecessary and improper for counsel  
6 to rise to "join in" an objection or motion. Rather, counsel should rise to be heard only for the  
7 purpose of expressly opting out of an objection or motion if that is his or her position.

8       19. Counsel are directed to deliver to opposing counsel at the end of each trial day (if not  
9 earlier) a list of witnesses counsel anticipates calling the next trial day.

10       20. Counsel calling a non-client witness to testify should have no further discussions with  
11 that witness concerning the case or any aspect of his or her testimony after the witness has been  
12 tendered for cross-examination and until such time as the witness has been tendered back for redirect  
13 examination. At all other times, within the bounds of governing ethics and the law, counsel may  
14 engage in discussions with witnesses during trial.

15       21. Any time taken away from presentation of evidence to the Court, for example, lengthy  
16 legal motions made during the time allocated to the presentation of evidence, or delays in the  
17 commencement of proceedings due to circumstances within the control of counsel, will be deducted  
18 from the time allocated for the presentation of evidence. Upon timely application based upon good  
19 cause, the Court may relieve a party of its stipulation to the agreed schedule.

20       22. It is the practice of the Court periodically to inform counsel of the Court's record of how  
21 much time each side has remaining for the presentation of evidence based upon the stipulated trial  
22 schedule.

23       23. In an effort to assist the Court in its understanding of the evidence, after each witness  
24 has been excused, counsel may request permission to address the Court for purposes of commenting  
25 on the significance of the evidence. Commentary shall be limited to 5 minutes for each party.  
26 Commentary shall be opened by the side calling the witness (unless waived) and closed by the side  
27 cross-examining the witness. No rebuttal to commentary shall be allowed. Commentary must  
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1 conform to the rules of evidence with respect to closing argument. Time taken for commentary shall  
2 be deducted from the time allocated to each side for the presentation of evidence.

3 **Daily Trial Transcript**

4 24. Any counsel desiring daily or expedited transcripts during trial should make immediate  
5 arrangements with the court reporter and should inform the Court and other counsel of such  
6 intentions.

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8 Dated: May 19, 2008

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*James Ware*  
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JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Ann N. Cathcart Chaplin cathcartchaplin@fr.com  
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8 **Dated: May 19, 2008**

**Richard W. Wieking, Clerk**

9 By: /s/ JW Chambers

10 **Elizabeth Garcia**  
**Courtroom Deputy**